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MCI Telecommunications Corporation
1801 Pennsylvania Avenue, NW
Washington, DC 20006
202 872 1600

November 1, 1993

Mr. William Caton
Secretary
Federal Communications Commission
Room 222
1919 M Street, NW
Washington, DC 20554

Re: RM-8357 -- Proposed Revision of Section 69.605 of the Commission's Rules to Allow Small Cost Settlement Companies to Elect Average Schedule Settlement Status

Dear Mr. Caton:

Enclosed herewith for filing are the original and four (4) copies of MCI Telecommunications Corporation's Opposition to Petition in the above-captioned proceeding.

Please acknowledge receipt by affixing an appropriate notation on the copy of the MCI Petition furnished for such purpose and remit same to the bearer.

Sincerely yours,

Elizabeth Dickerson

Elizabeth Dickerson
Manager, Federal Regulatory

Enclosure
ED/ms

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20054

In the Matter of	)	
	)	
Proposed Revision of Section	)	
69.605 of the Commission's Rules	)	RM No. 8357
to Allow Small Cost Settlement	)	
Companies to Elect Average Schedule	)	
Settlement Status	)	

OPPOSITION TO PETITION

MCI Telecommunications Corporation (MCI) hereby submits its opposition to a Petition for Rulemaking filed by the National Exchange Carrier Association, Inc. (NECA) in the above-captioned proceeding. In its petition, NECA requests that the Commission initiate a rulemaking proceeding to modify § 69.605 of its rules to permit small local exchange carriers (LECs) significant flexibility in electing average schedule status. Specifically, NECA wishes to (1) eliminate altogether the Commission's reliance on December 1, 1982 participation in average schedules as an indicator of current average schedule eligibility; (2) allow the LECs to shift between cost and average schedule status with virtually no limitation; and (3) double the maximum number of access lines that currently restricts average schedule participation.

NECA argues that changing the rule will reduce the regulatory burdens (and, hence, financial and administrative costs) of the small carriers, and extend the benefits of regulatory reform to a new group of carriers. Further, it contends that the decreasing need for jurisdictional cost separation studies is "unnecessary to isolate

the interstate portion of operations." Finally, NECA submits that the average schedule methodology will produce interstate rates that "closely simulate cost company settlements and reasonably reflect interstate access costs."[1]

In effect, NECA is asking the Commission to consider extending to the small LECS the flexibility to periodically select whether to participate as cost or average schedule companies, an option that the Commission has historically carefully restricted to a few discrete occasions. MCI does not believe that NECA has illustrated either that changed circumstances in the industry warrant such flexibility or that the proposed option is free from potential abuses. For those reasons, MCI urges the Commission to deny NECA's Petition.

NECA accurately states that on two separate occasions the Commission has provided small cost carriers an additional opportunity to select average schedule status. Initially, NECA argued that "changed circumstances" since the initial election of average schedule status warranted a new opportunity for LECs to reconsider their status.[2] The Commission agreed that circumstances had, indeed changed since December 1982, but it declined to permit the LECs an "unbounded opportunity" to

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[1] NECA Petition, pp. 2, 3.

[2] Specifically, NECA contended that (1) the average schedules have been, and are likely to be, updated with grater frequency than had been the case prior to December 1, 1992; (2) that the average schedules now more closely reflect the costs of providing interstate exchange access services; and (3) that requiring cost studies for interstate settlements in states that have eliminated cost studies for intrastate purposes imposes unnecessary administrative costs upon small exchange carriers. NECA Petition for Waiver, January 30, 1987, pp. 1, 2.

select average schedule treatment. Instead, it provided a period slightly longer than one month to make the election.[3]

In response to petitions seeking reconsideration of that Order, the Commission expanded its definition of the 5,000 access lines limit by clarifying that access lines were counted on a individual company -- and not affiliated company -- basis. Curiously, the industry argued that NECA's original petition was not intended to include affiliated carriers in its calculation, despite NECA's plain statement that it was necessary to limit average schedule companies to those with only 5,000 lines in order to avoid "significant impacts" on cost and demand characteristics of the companies. In fact, NECA stated that it intended to "reevaluate this petition for waiver" if the Commission were to extend average schedule status to companies with greater than 5,000 lines.[4] The Commission again provided carriers with a short period of time (three months) to take advantage of this "one time opportunity."[5]

Rather than allowing the Commission to periodically evaluate "changes in circumstances [that might, in the] future, warrant additional opportunities for cost companies to convert to average schedule treatment,"[6] NECA now seeks an "open

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[3] NECA's Proposed Waiver of Section 69.605(c) of the Commission's Rules, Memorandum Opinion and Order, CC Docket No. 78-72 (Phase I), 2 FCC Rcd 3960 (1987).

[4] NECA Petition, pp. 3, 4.

[5] Petitions Seeking Average Schedule Settlements for Affiliated Cost Companies with 5,000 or Fewer Access Lines, Memorandum Opinion and Order, 3 FCC Rcd 6003 (1988).

[6] 2 FCC Rcd 3960 (1987).

enrollment" policy that it simply does not justify. First of all, NECA does not indicate the basis for its estimate of the $25,000 annual cost for the 645 average schedule companies to perform cost studies. Nor does it clarify whether eliminating jurisdictional cost separation studies could result in overearnings.[7] Finally, NECA offers no evidence in support of its contention that average schedules closely and "reasonably reflect interstate access costs."[8] To the contrary, the Commission has noted that "[g]enerally, [traffic sensitive] rates filed by Section 61.39 carriers have been consistently lower than the NECA rates,"[9] and it relied on this factor in deciding to extend §61.39 rules to common line rates as well.[10] Though average schedule companies are but a subset of the NECA pools, it is likely that not requiring these companies to file rates based on costs contributes to the higher rates the Commission has observed.

Such a trend in rates largely rebuts NECA's earlier contention that permitting additional cost companies to elect average schedule status would result in "lower formula settlement levels" in the future.[11] If lower settlements were the actual result of

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[7] Absent separations studies, it is difficult to determine whether carriers are earning a return on greater than 100 per cent of their rate base.

[8] NECA Petition, p. 3.

[9] Regulatory Reform for Local Exchange Carriers Subject to Rate of Return Regulation, Notice of Proposed Rulemaking, CC Docket No. 92-135, 7 FCC Rcd 5023, 5028 (1992).

[10] Regulatory Reform for Local Exchange Carriers Subject to Rate of Return Regulation, Report and Order, CC Docket No. 92-135, 8 FCC Rcd 4545, 4559, (1993).

[11] NECA Petition for Waiver (January 30, 1987), p. 3, f.n. 6.

encouraging the proliferation of average schedule status for small LECs, it is curious to MCI that NECA did not include in its instant petition, the documented reductions in average schedule settlement costs that the Commission directed it to provide.[12] Such empirical evidence of the reduced costs that would benefit ratepayers would have added credence to NECA's assertion that a rulemaking to expand average schedule status is appropriate.

In complete and inexplicable abandonment of its earlier concerns, NECA is now proposing to double the size of the company for which average schedule status is available. NECA argues that "[s]etting the eligibility level at fewer than 10,000 access lines assures that pool revenue requirements are minimal."[13] Such a claim is meaningless since similar "assurance" would be available if the eligibility requirement were maintained at the current 5,000 access lines. Indeed, it is probable that the pool revenue requirements would be affected less if the lower limit continued to be observed. NECA, however, offers no reason to double the limit above the one that has historically defined average schedule companies. Most importantly, NECA offers no hint of changed circumstances that allows it to now abandon its concern that "it was necessary to exclude exchange carriers with more than 5,000 access lines from converting to average schedule settlements so that settlement fluctuations, 'as well as potential NECA rate changes, can be minimized by limiting the size of exchange

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[12] 3 FCC Rcd 6003, 6004 (1988).

[13] Petition, p. 5, f.n. 13.

carriers which may elect to convert from cost to average schedule."[14]

Finally, MCI is most concerned with NECA's request for the "heads I win -- tails you lose" type of flexibility that the LECs all too frequently attempt to achieve. That is, NECA is proposing rule changes that would allow the small LECs to convert to and from cost status, almost at will, despite the Commission's historical preference for unidirectional exercise of regulatory options.[15] The problem with allowing this type of flexibility is that it provides the LECs with a means of gaming the system: they can select whichever form of regulation maximizes their earnings during the period under study. On this very topic the Commission has previously expressed its concern that carriers not be granted unlimited election opportunities:

> A cost company that receives sufficient depreciation will eventually find it profitable *ceteris paribus*, to convert to the average schedules because of the concomitant reduction to its rate base. We do not believe that it would be sound to permit exchange carriers to receive the windfall that would result if they were permitted to elect to depreciate plant to the "cross over" point and then receive average schedule treatment.[16]

When considering the time frames that scan the decades over which telecommunications plant is depreciated, a four year restriction serves as virtually no restriction at all. Further, not only does NECA not offer any basis for selecting this four year period, it utilizes a justification for the flexibility that turns on its head its entire request for expanded average schedule status: "Settlements that are based on actual

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[14] 3 FCC Rcd 6003 (1988), citing Petition for Waiver (January 30, 1984), p. 3.

[15] For example, the Commission required, with minor exceptions, that carriers exiting the Common Line Pool not be permitted to return. Similarly, those who opted for price cap regulation generally may not revert to rate-of-return status.

[16] 2 FCC Rcd 3960 (1987).

costs ... will continue to be the preferred method for many telephone companies."[17]

MCI agrees that there should be a compelling reason to allow LECs to establish settlements on any basis other than costs. Since NECA has not even shown that circumstances have changed enough to permit a single opportunity for cost companies to convert to average schedule, there certainly is no justification to permit such flexibility on an unrestricted basis. For these reasons, MCI urges the Commission to not initiate a proceeding that modifies Part 69.605 of its rules.

Respectfully submitted,

MCI TELECOMMUNICATIONS CORPORATION

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November 1, 1993

[17] NECA Petition, p. 6.

STATEMENT OF VERIFICATION

I have read the foregoing and, to the best of my knowledge, information, and belief, there is good ground to support it, and it is not interposed for delay. I verify under penalty of perjury that the foregoing is true and correct. Executed on November 1, 1993.

Elizabeth Dickerson

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CERTIFICATE OF SERVICE

I, Susan Travis, do hereby certify that copies of the foregoing MCI Opposition to Petition were sent via first class mail, postage paid, to the following on this 1st day of November 1993:

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